Supreme Court, U.S.
FILED
051102 FEB 27 2006
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No. _____

In The
Supreme Court of the United States

LOUISIANA BOARD OF REGENTS, LOUISIANA BOARD OF REGENTS, also known as UNIVERSITY OF LOUISIANA SYSTEM BOARD OF TRUSTEES, also known as UNIVERSITY OF LOUISIANA SYSTEM; STATE OF LOUISIANA; WILLIAM CARVEL FOWLER, individually; BOARD OF SUPERVISORS FOR THE UNIVERSITY OF LOUISIANA SYSTEM, formerly known as BOARD OF TRUSTEES, DOING BUSINESS AS LOUISIANA TECH UNIVERSITY,

Petitioners,

v.

WENDY RENEE BENNETT-NELSON and JOY MARIE BOYKIN,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Can Congress condition federal financial assistance to states upon a waiver of sovereign immunity under the spending clause and, if so, to what extent?

II. Do state agencies voluntarily waive sovereign immunity when they are not direct beneficiaries of federal financial assistance?

III. Does 42 U.S.C. §2000d-7 unconstitutionally condition the receipt of federal financial assistance upon the states' waiver of sovereign immunity?

PARTIES TO THE PROCEEDING

Petitioners are Louisiana Board of Regents, Louisiana Board of Regents, also known as University of Louisiana System Board of Trustees, also known as University of Louisiana System; State of Louisiana; William Carvel Fowler, Individually; Board of Supervisors for the University of Louisiana System, formerly known as Board of Trustees, doing business as Louisiana Tech University.

Respondents are Wendy Bennett-Nelson and Joy Marie Boykin.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at *Bennett-Nelson v. Board of Regents*, 431 F.3d 448 (5th Cir. 2005) and is reprinted at App. 1. The District Court issued one opinion that was appealed to the Fifth Circuit dated July 23, 2003, which is reprinted at App. 16.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its opinion on November 28, 2005. This Court's jurisdiction is invoked under 28 U.S.C. §1251 and §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. I, §8, cl. 1:

The Congress shall have the power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts, and to provide for a common Defense and general welfare of the United States.

U.S. Const. amend. X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. amend. XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by

citizens of another State, or by Citizens of any Foreign State.

U.S. Const. amend. XIV, §5:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. §2000d-7(a). Civil Rights and Remedies Equalization Act.

A state shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) or the provisions of any other Federal Statute prohibiting discrimination by recipients of Federal financial assistance.

29 U.S.C. §794. Nondiscrimination under Federal grants and programs.

(a) Promulgation of rules and regulations. No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity conducted by an Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed